

United States District Court Southern District of Texas

Case Number: 05-451

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

TIMOTHY JAMES POOLE §
§
VS. § C.A. NO. G05651
§
KIRBY INLAND MARINE, LP and § Pursuant to Rule 9(h) of
KIRBY CORPORATION § the Federal Rules of
§ Civil Procedure – AD

AFFIDAVIT OF JAMES C. GUIDRY

STATE OF TEXAS §
§
COUNTY OF HARRIS §

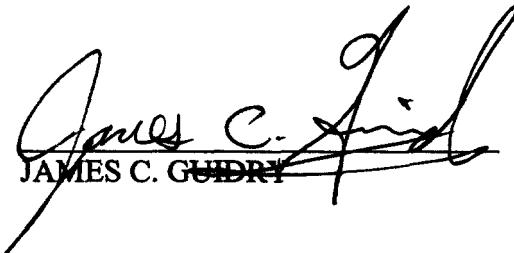
BEFORE ME, the undersigned Notary Public, duly commissioned and qualified in and for the aforesaid state and county, personally came and appeared James C. Guidry, who, having been duly sworn, deposes and says on oath the following:

1. I am James ("Jim") C. Guidry, an adult, laboring under no legal disability and I am providing the following information based upon my personal knowledge and upon information provided to me in my capacity of General Manager of Canal Operations for Kirby Inland Marine, LP, which I have personally reviewed.
2. I have held the position of General Manager of Canal Operations for Kirby Inland Marine, LP for three years.
3. As General Manager for Canal Operations, I manage the operations of boat tankermen, and I have personal knowledge of the duties and responsibilities of boat tankermen.
4. Boat tankermen work hitches whereby the tankerman will be on a boat for 14-21 days at a time.
5. Boat tankermen stand watch on the vessel and are assigned a work schedule with shifts.

Ex: E

6. Boat tankermen are paid a daily rate and are not paid by the hour or for overtime.
7. Boat tankermen are part of a crew of the tug boat on which they travel.
8. The boat tankermen of Kirby Inland Marine are assigned to a boat, and most often sleep and eat on the boat as well.
9. While working hitches, boat tankermen are assigned bunks for sleeping.
10. Boat tankermen do not bring their own tools to the site.
11. Boat tankermen do not need to sign a guest book when boarding a tug boat, as they are part of the crew.
12. Boat tankermen are supervised by the boat's captain and are instructed to perform their work by the captain of the boat.
13. The duties which a boat tankerman can be instructed to do onboard a vessel include basic deckhand duties. These duties may include, but are not limited to, performing engine room maintenance, preparing the steel for paint or chipping, scaling or buffing the boats.
14. A boat tankerman's duties while on board a boat, may also include preparing meals for the crew.
15. As a boat tankerman, the tankerman could also perform a host of other activities such as putting out breast wires, jockey wires, face wires, wing wires, backing wires, towing wires and building a strung-out coupling, a breasted-up coupling or a high-low coupling.
16. Job duties of a boat tankerman could also include breaking coupling or building steering coupling.
17. If Mr. Poole had been a boat tankerman, the general operation of the boat would have been explained to him. He would have also been educated in what to do in a man overboard drill, a collision drill and an abandon ship drill.

FURTHER AFFIANT SAYETH NOT.


JAMES C. GUIDRY

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned authority, this
23rd day of May, 2006.

Kem F. Coan

Notary Public for State of Texas



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

TIMOTHY JAMES POOLE §
VS. § C.A. NO. G05651
KIRBY INLAND MARINE, LP and §
KIRBY CORPORATION § Pursuant to Rule 9(h) of
§ the Federal Rules of
§ Civil Procedure – AD

AFFIDAVIT OF KALLUM K. KITTLEY

STATE OF TEXAS §
§
COUNTY OF HARRIS §

BEFORE ME, the undersigned Notary Public, duly commissioned and qualified in and for the aforesaid state and county, personally came and appeared Kallum K. Kittley, who, having been duly sworn, deposes and says on oath the following:

1. I am Kallum ("Kal") K. Kittley, an adult, laboring under no legal disability, and I am providing the following information based upon my personal knowledge and upon information provided to me in my capacity of Manager of Shore Tankering Operations for Kirby Logistics Management, a division of Kirby Inland Marine, LP, which I have personally reviewed.
2. I have been the manager for shore tankering operations for Kirby Logistics Management for six and one-half years.
3. I have personal knowledge of the duties of shore tankermen, as shore tankermen are employed by the Kirby Logistics Management division of Kirby.
4. Furthermore, prior to my becoming the Manager of Shore Tankering Operations, I

Ex: F

was a shore tankerman for ten years and also was an instructor for shore tankermen.

5. Kirby's insurance for shore tankermen includes USLHW (United States Longshore and Harbor Worker's), insurance which is specifically for shore tankermen and longshoremen who board vessels.

6. Mr. Poole, while employed by Kirby, was covered by the USLHW insurance for longshoremen and shore tankermen.

7. Kirby Logistics Management division employs the shoreside tankermen for Kirby Inland Marine, LP.

8. Mr. Timothy Poole was employed as a shore tankerman.

9. A shoreside tankerman is not assigned to a boat and is not part of a crew.

10. Shoreside tankermen are paid hourly wages and are paid overtime.

11. Shore tankermen do not sleep on the barges or boats.

12. Shore tankermen bring their own food while working and do not eat with the crew of a vessel.

13. Shore tankermen bring their own tools to the worksite.

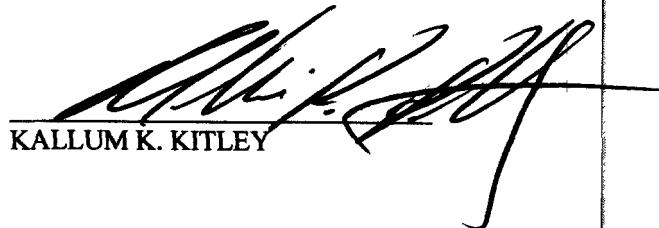
14. Shoreside tankermen do not work specific shifts, but are typically on call for seven days at a time and then off call for two days.

15. Once called to a job, a shore tankerman does not travel on the tug boats as do boat tankermen, but he drives himself from one dock to another. The shoreside tankerman is reimbursed for his mileage to travel to the docks.

16. Shore tankermen are not directed in their work by the captain of a boat, or any other crew members of a boat.

17. Shore tankermen who board tug boats are required to sign the guest book and show identification as they are not members of the crew.
18. Shore tankermen duties do not include performing deckhand duties such as performing engine room maintenance, preparing the steel for paint or chipping, scaling or buffing of the boats.
19. A shore tankerman would not prepare meals for the crew of a boat.
20. Shore tankermen are instructed as to where to go by dispatch which is located on-shore.
21. Shore tankermen report to individuals employed by the Kirby Logistics Management division who are not members of a crew and are not located on boats, but at an on-shore location.
22. If any trouble or incident should arise while at the worksite, the shore tankerman would report back to a land-based supervisor and not the boat's captain or any crew members of the vessel.
23. Shore tankermen do not work on barges that are underway, but only those that are docked.

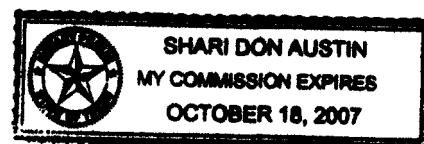
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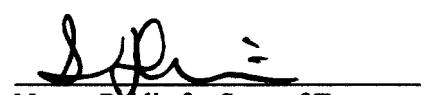


KALLUM K. KITLEY

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned authority, this

24 day of May, 2006.





Notary Public for State of Texas